

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 16-364V

Filed: April 21, 2017

UNPUBLISHED

MARTHA WORLEIN,

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Petitioner,

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v.

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Attorneys' Fees and Costs;

SECRETARY OF HEALTH

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Special Processing Unit ("SPU")

AND HUMAN SERVICES,

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Respondent.

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Larry Gene Michel, Kennedy, Berkley, et al., Salina, KS, for petitioner.

Christine Mary Becer, U.S. Department of Justice, Washington, DC, for respondent.

DECISION ON ATTORNEYS' FEES AND COSTS¹

Dorsey, Chief Special Master:

On March 21, 2016, petitioner filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*,² (the "Vaccine Act"). Petitioner alleged that that she developed a left rotator cuff tear as a result of her October 6, 2014 influenza ("flu") vaccination. Petition at 1-3. On March 10, 2017, the undersigned issued a decision awarding compensation to petitioner based on the parties' Stipulation. (ECF No. 31).

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, the undersigned intends to post it on the United States Court of Federal Claims' website, in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). In accordance with Vaccine Rule 18(b), petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, the undersigned agrees that the identified material fits within this definition, the undersigned will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all "§" references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

On March 28, 2017, petitioner filed an unopposed motion for attorneys' fees and costs. (ECF No. 35).³ Petitioner requests attorneys' fees and costs in the amount of \$15,000.00.⁴ *Id.* at 1. In accordance with General Order #9, petitioner's counsel represents that petitioner incurred no out-of-pocket expenses. *Id.* at 2.

The Vaccine Act permits an award of reasonable attorneys' fees and costs. § 15(e). Based on the reasonableness of petitioner's request and the lack of opposition from respondent, the undersigned **GRANTS** petitioner's motion for attorneys' fees and costs.

Accordingly, the undersigned awards the total of \$15,000.00⁵ as a lump sum in the form of a check jointly payable to petitioner and petitioner's counsel, Lawrence Gene Michel.

The clerk of the court shall enter judgment in accordance herewith.⁶

IT IS SO ORDERED.

s/Nora Beth Dorsey
Nora Beth Dorsey
Chief Special Master

³ Petitioner indicates in her motion that her "counsel has conferred with [r]espondent's counsel, who has indicated that she does not oppose a request of \$15,000.00 for [p]etitioner's fees and costs in this matter." (ECF No. 35 at 2).

⁴ The undersigned has reviewed the billing records submitted with petitioner's motion and views the law clerk rate as likely too high in this claim, but does not reach that issue as counsel has already reduced his total request for fees and costs and respondent has no objection to the amount requested.

⁵ This amount is intended to cover all legal expenses incurred in this matter. This award encompasses all charges by the attorney against a client, "advanced costs" as well as fees for legal services rendered. Furthermore, § 15(e)(3) prevents an attorney from charging or collecting fees (including costs) that would be in addition to the amount awarded herein. *See generally Beck v. Sec'y of Health & Human Servs.*, 924 F.2d 1029 (Fed. Cir.1991).

⁶ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.